

Approved: April 5, 1996
date

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on March 28, 1996 in Room 123-S of the Capitol.

Members present: Senators Salisbury, Burke, Downey, Feleciano, Gooch, Harris, Hensley, Jordan, Petty, Ranson, Reynolds, Steffes and Vidricksen.

Committee staff present: Lynne Holt, Legislative Research Department
Bob Nugent, Revisor of Statutes
Betty Bomar, Committee Secretary

Conferees appearing before the committee:

William E. Roche, Vice President, Governmental & Public Affairs, Sprint/United Telephone - Midwest
Ronald R. Hein, Legislative Counsel, Classic Communications
Representative Doug Lawrence

Others attending: See attached list

SubHB 2728: Concerning telecommunications services

William E. Roche, Vice President, Governmental & Public Affairs, Sprint/United Telephone-Midwest, testified in opposition to SubHB 2728. Mr. Roche stated Sprint is a global communications company integrating long distance, local and wireless communications services. He said change in the telecommunications industry demands balance which is not found in SubHB 2728. Sprint is a local exchange carrier through United Telephone. It is an access provider and an access customer. Sprint/United firmly supports competition but desires a middle ground on how to accomplish this goal. According to Mr. Roche, suggestions offered are rooted in an attempt to achieve a middle ground which will allow the telecommunications industry a smooth transition to fully competitive markets. Mr. Roche stated that two of the strongest points in SubHB 2728 is the recognition that price and service quality regulation should be an option for local exchange carriers and the recognition that local exchange carrier rates must be rebalanced.

Mr. Roche advised that SubHB 2728 contains provisions that will significantly impede competition and threaten legitimate customer choice. Section 6(d) grants incumbent local exchange carriers pricing flexibility, limits consumers' knowledge of pricing options offered by monopolists, denies competitors limited regulatory oversight as competition emerges and relegates the Commission to a very minor role in the evolution to competition. Mr. Roche stated the manner in which the Kansas Universal Service Fund is to be funded violates the directives established in the federal legislation. He suggested that Section 11 of SubHB 2728 be amended to require all providers of telecommunications services to contribute to the Kansas Universal Service Fund and the Kansas Lifeline Service Fund on an equitable and nondiscriminatory basis, i.e. each company's contribution should consist of a percentage of its intrastate revenues less payments to intermediaries. Mr. Roche proposed an additional section to SubHB 2728 which explicitly provides the Kansas Corporation Commission with the flexibility to construe provisions of the legislation in a manner to avoid conflict with any authority of the United States and to establish rules that are responsive to federal law or developments in the local exchange market. (Attachment 1)

Mr. Roche submitted Answers to Policy Questions (Attachment 2) and Proposed Amendment to SubHB 2728 (Attachment 3)

Ronald R. Hein, Legislative Counsel, Classic Communications, appeared on SubHB 2728. Mr. Hein stated Classic Communications owns significant cable television franchises in Kansas and other states. Classic's mission is to provide high quality telecommunications services at a competitive price in rural markets. Mr. Hein stated Classic is concerned regarding the distribution of the Kansas Universal Service Fund moneys. SubHB 2728, as originally introduced, allowed entitlement to the Kansas Universal Service Fund only to incumbent companies which puts them at a competitive advantage. Mr. Hein submitted an amendment to ensure that all telecommunications service providers who utilize infrastructure to serve an

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCE, Room 123-S Statehouse, at 8:00 a.m. on March 28, 1996.

exchange area are entitled to participate in the Kansas Universal Service Fund. Classic is in favor of any amendments that bring SubHB 2728 more into line with the Federal Act. (Attachment 4)

Melanie Fannin, President, Southwestern Bell Telephone Company, submitted, on behalf of the Kansas Telecommunications Coalition, its response to questions posed at the March 26 hearing on SubHB 2728. (Attachment 5)

Senator Feleciano inquired of Mr. Roche whether the proposed amendments offered by Glenda Cafer, Kansas Corporation Commission would be acceptable. Mr. Roche responded, yes. The same question was asked of Melanie Fannin. She responded, no.

Representative Doug Lawrence was asked questions related to price caps, pricing flexibility, and rate rebalancing, and specifically, if local rates will go up with the enactment of SubHB 2728. Rep. Lawrence responded local rates will go up regardless of what occurs with the proposed legislation.

Upon motion by Senator Gooch, seconded by Senator Steffes, the Minutes of the March 25, 1996, meeting were unanimously approved.

The meeting adjourned at 10:00 a.m.

The next meeting is scheduled for March 29, 1996.

SENATE COMMERCE COMMITTEE GUEST LIST

DATE: March 28, 1996

NAME	REPRESENTING
Rob Hodges	KTA
CARL KREHBIEL	MOUNDRIDGE TELEPHONE CO.
M. CLARUSSIMPAEA	CLASSIC COMMUNICATIONS
John D. Pieggar	SITA
Randy R. Debenham	KCC
Tom Day	KCC
Joan Owens	MCT
BRIAN LIPOLD	MULTIMEDIA HYPERION
MIKE LURA	AT&T
MIKE REECHT	AT&T
Barbara Reel	L.P.A.
Debra Peterson	Sprint
Bill Roche	Sprint/United
Scott Richardson	SUBT
DAVID B. SCHLOSSER	PETE MCGILL & ASSOC
DAVE HEINEMANN	KCC
Don Lawrence	Legislature
Bill Drake	SUBT
Jay Scott Eimler	KINI L.C.

SENATE COMMERCE COMMITTEE GUEST LIST

DATE: March 28, 1996

NAME	REPRESENTING
Debra Schmidt	KINI L.C.
Meggen Griggs	KIWI L.C.
Karen Matsen Flaming	KCC
Bill Roche	SPRINT
Ron Heira	Classic Communications
Nelson Krueger	Kansas City FiberNet
Tom Gleason	Independent Telecom. Group
Bill BLASE	SOUTHWESTERN BELL
Doug Smith	SITA
RICHARD VERCH	PIONEER TELEPHONE
DENNY KOCH	SW BELL TEL.
Urew Fleming	TCI of Kansas, Inc.
Mike Meacham	KCTA
Patrick J. Hurley	ATTN

BEFORE THE
SENATE COMMERCE COMMITTEE
Substitute for H.B. 2728
MARCH 25, 1996

Testimony of:
William E. Roche
Vice President
Governmental & Public Affairs
Sprint/United Telephone-Midwest

Thank you Senator Salisbury and members of the Committee for the opportunity to offer the views of Sprint Corporation's various business units: United Telephone of Kansas, Sprint Long Distance, and Sprint Spectrum, regarding telecommunications policy for the state of Kansas.

Sprint, as you are aware, is a global communications company at the forefront of integrating long distance, local and wireless communications services, and is the world's largest carrier of internet traffic. While our ancestral roots trace to Abilene, Kansas, today Westwood, Kansas, is home to Sprint Corp.'s world headquarters. Sprint has more than 7,000 employees in Kansas.

The companies I represent are convinced that telecommunications can advance education, health care and economic development in Kansas if the state changes how local telephone companies are regulated and simultaneously creates an environment which encourages robust competition in the local telephone market. However, the desire for change demands balance and an adherence to principle. The state must avoid an overzealous desire to deregulate traditional monopolists to the detriment of competition and the public good. Affirmative efforts should be made to coordinate state and federal policy.

*Senate Commerce
March 28, 1996*

Attachment 1 thru 1-7

The Kansas Corporation Commission should play a significant role in assuring that all interests are properly balanced as we move to a fully competitive market for all telecommunications services.

Sprint brings a unique perspective to this debate. Our perspective is much larger than even the significant experience we have as a telecommunications provider in Kansas where United Telephone of Kansas serves more than 130,000 residences, businesses and public institutions. United of Kansas is but one of Sprint's local exchange carriers, which together serve nearly 6.5 million access lines in 19 states. Sprint Long Distance is the nation's third largest interexchange carrier, serving more than 8 million customers domestically and millions more internationally. Sprint is a major partner in Sprint Spectrum, a partnership that intends to provide a new generation of wireless telephone services across America.

Sprint's diversity requires exhaustive internal debate on policy issues like the ones you are examining. For example, through its local exchange carrier (United Telephone), Sprint is an access provider, and as an interexchange carrier, Sprint is an access customer. The goal of most local exchange carriers is to preserve market share, but as a competitive local service provider, Sprint will attempt to capture market share from existing companies.

As you can imagine, the varying interests of our diverse business units generates policy debates within Sprint which are more than vigorous as we attempt to accommodate the legitimate interests of the various Sprint entities

and to best serve our diverse customer base. As a result of our debates, our policy positions firmly support competition but represent a middle ground on how to accomplish that goal. As an early and vigorous competitor in the long distance market, we have experienced the effects of competing in a market with a once dominant monopolist and the benefits of the transition to a more competitive environment. Consequently, the proposals we offer today, which are rooted in fact, offer the middle ground that will allow the telecommunications industry to transition to fully competitive markets.

While Sprint did not have a company representative on the Telecommunications Strategic Planning Committee, we carefully followed the Committee's work and let our views be known to Committee members through letters and personal contacts. We were similarly engaged in the House debate. In fact, we authored and asked the House Select Committee to adopt H.B. 2960. We come to you this date to strongly recommend several changes to H.B. 2728 which are essential if Kansas is to have sound telecommunications public policy.

Beginning with the Telecommunications Strategic Planning Committee's "Policy Framework for Telecommunications" through the passage of the Substitute for House Bill No. 2728 last week, legislators have shown their commitment to change the way local telephone companies are regulated and create a vehicle to remove the existing distortions in our rates. From Sprint's perspective, these are two of the strongest points in the bill -- recognition that price and service quality regulation should be an option for local exchange

carriers and recognition that local exchange carrier rates must be rebalanced if local carriers are to be viable players in the competitive local service market. Sprint has long held that price regulation is far superior to rate-of-return regulation under any circumstances. Price regulation offers local telephone companies the incentive to invest in their networks in order to become more efficient and to grow revenues by introducing new services. Such an approach is in marked contrast to traditional rate-of-return regulation which, while adequate in a monopoly environment, prevents competition by creating inappropriate incentives for local exchange carrier investments in infrastructure. In short, rate-of-return discourages efficient pricing, cost reductions, and technology deployment. In contrast, price and service quality regulation is essential as competition is introduced to the local service market. Coupled with rules to rebalance rates, price and service quality regulation will enable Kansas telephone companies to respond to emerging competition and will prevent cross subsidization and abuse of market power. In addition, removing distortions in current prices for local and intrastate access services will reduce costs for interexchange carriers. As prices are driven toward these lower costs, which occurs in a competitive market, consumers will benefit and demand will be stimulated. The result is a win for customers, companies and the economy.

Since the Strategic Planning Committee issued its report and while various bill drafts were being considered in the House Select Committee on Telecommunications, a landmark event occurred which remedied many of the

shortcomings of the original report, and consequently, fostered the opportunity for legitimate competition in Kansas. That event was the signing of the Telecommunications Act of 1996 on February 8. Because of the passage of this federal legislation, and at the urging of Sprint and others, attempts to limit the resale of local telephone services and numerous proposals creating barriers to competition have been eliminated from the original House versions.

While progress has been made during the legislative process, the Substitute for HB 2728 still contains provisions which will significantly impede competition and threaten legitimate customer choice. Unless these issues can be resolved, Sprint cannot support this legislation. Of serious concern is New Sec. 6(D) of Substitute for H.B. 2728, which grants incumbent local exchange carriers inordinate pricing flexibility, limits consumers' knowledge of pricing options offered by traditional monopolists, denies competitors limited regulatory oversight as competition attempts to emerge from an embryonic state and relegates the Commission to a very minor role in the evolution to competition. Even as a local exchange carrier, Sprint believes that the pricing flexibility language in H.B. 2728 goes too far too fast. The language allows the incumbent local exchange carrier to reduce the prices of service if it believes such action is necessary to meet a price offer by an alternative provider. Such action can be taken without initial review by the Commission and is colored with the presumption of lawfulness. As Kansas travels the quickly emerging route from a fully regulated telecommunications environment to a competitive environment,

provision must be made for continued Commission involvement in the review of incumbent local exchange carrier pricing activities if competition is ever to emerge and develop. It is not unreasonable and Sprint strongly urges that any price offerings envisioned by New. Sec. 6(D) be made generally available to similarly situated customers on the same terms and conditions. It also is imperative that the Commission, on an expedited basis, review any such proposal and confirm the assertions of the incumbent local exchange carrier as to the existence of competition and affirm that it has priced its services at or above long run incremental costs. Without these protections for consumers and providers, Sprint will not support this bill.

Since the passage of federal legislation in February, the provisions in H.B. 2728 regarding universal service have been significantly altered and improved. However, the manner in which the Kansas Universal Service Fund is to be funded violates the directives established in the federal legislation. As we in Kansas work to develop public policy which will guide us into the next century, we should strive for consistency where appropriate or necessary. Sprint urges that Section 11 of H.B. 2728 be amended to require all providers of telecommunications services to contribute to the Kansas Universal Service Fund and the Kansas Lifeline Service Fund on an equitable and nondiscriminatory basis. Each company's contribution should consist of a percentage of its intrastate revenues less payments to intermediaries. To fail to employ such an

approach serves only to discriminate against users of particular services, evades federal law and is not supportable.

Finally, an additional section to H.B. 2728 should be added to explicitly provide the Commission with the flexibility to construe provisions of this legislation in a manner to avoid conflict with any authority of the United States and to establish rules that are responsive to federal law or developments in the local exchange market. Such a directive will allow Kansas to respond quickly and in a leadership manner to a burgeoning competitive market.

Senator Salisbury, members of the Committee, I thank you again for the opportunity to appear and express our opinions and deep concerns with this legislation.

Sprint Corporation
Answers to Policy Questions for Conferees on Substitute for H.B. 2728, as
Amended by House Committee of the Whole
March 25, 1996

1. In your view, what is the proper role of the Legislature and the Kansas Corporation Commission with respect to the regulation of intrastate telecommunications services in Kansas? Does Sub. for H.B. 2728 comport with your perspective of that role?

The Kansas Legislature should set broad public policy regarding the regulation of intrastate telecommunications services in the state and should ensure that state policy is consistent with federal policy. In turn, the Kansas Corporation Commission should promulgate and enforce rules which implement the legislature's policies. The Commission should ensure that state rules are consistent with federal rules. In many ways, Sub. for H. B. 2728 not only establishes regulatory policy, but also details how that policy is to be implemented. For example, New. Sec. 11 prescribes in detail who is to fund universal service support in the state and on what basis the payees' contributions are to be calculated. In contrast, the Federal Telecommunications Act of 1996 says simply that the federal universal service fund is to be supported by all telecommunications providers in a fashion that is competitively neutral.

2. In your opinion, is Sub. for H.B. 2728 needed and, if it is, why is the bill needed at this time?

State legislation is needed at this time to establish policies that will (1) change the way existing local telephone companies are regulated; (2) remove implicit subsidies from the existing rates of telephone companies;

*Senate Commerce
March 28, 1996*

Attachment 2 thru 26

(3) ensure the universal availability of high-quality, reasonably priced basic services; and (4) direct the Kansas Corporation Commission to cultivate an environment in which robust competition for all telecommunications services can develop and to do so in a manner consistent with the federal Telecommunications Act of 1996. Sub. for H.B. 2728, as amended by the House of Representatives achieves only the first objective.

3. In your view, what is the intent of and what are the implications of defining "universal service" and "enhanced universal service" in statute? (Sec. 2 (p) and (q))

By defining "universal service" and "enhanced universal service," Sub. for H.B. 2728 makes assumptions about the kinds of services Kansas consumers require and demand. In contrast, the Telecommunications Act of 1996 recognizes that universal service is "evolving," and leaves the initial and subsequent definitions of universal service to regulators.

4. In your opinion, what is the purpose of and what are the implications of requiring the Commission to complete a general investigation, issue an order, and adopt statewide guidelines as a condition of issuing more than one certificate to provide local service in a rural telephone company's service area? (New Sec. 5 (c))

Developing a stringent and detailed set of guidelines will slow the introduction of competition in rural Kansas. Consistent with the federal Telecommunications Act of 1996, the legislature should simply instruct the Kansas Corporation Commission to be cautious in introducing competition in rural areas. The Commission should make such decisions on a case-by-case basis as requests for competitive entry are made.

5. In your opinion, what is the intent of and what are the implications of:
- a. the requirement that all certificated telecommunications carriers and local exchange carriers be eligible to receive funds allocated from the Kansas Universal Service Fund (KUSF), if the Commission grants certificates for one or more telecommunications carriers and local exchange carriers; and

Allowing multiple of recipients from a Kansas Universal Service Fund is consistent with the Federal Telecommunications Act of 1996 and will encourage investment in rural Kansas.

- b. the proposed method of allocating such funds? (New Sec. 5 (e))

Requiring that only toll providers fund the Kansas Universal Service Fund is inconsistent with the Telecommunications Act of 1996. Federal law requires that a universal service fund be supported by all providers of telecommunications services and that such contributions be "equitable and nondiscriminatory."

6. Related to Question No. 5, what is the intent of and what are the implications of relieving a local exchange carrier of its carrier of last resort obligations and not allowing any telecommunications carrier or local exchange carrier to receive support from the KUSF if three conditions specified in the bill are met? (New Sec. 10 (b))

If the three conditions have been met, the Commission should determine if a carrier of last resort designation is necessary. Decisions about modifying the KUSF should be an ongoing responsibility of the Commission.

7. In your view, what is the purpose of requiring local exchange carriers to file network infrastructure plans? In your opinion, what are the possible ramifications to tying the deployment of universal service and enhanced universal service capabilities to the deadlines specified in the bill (within two years of filing the network plan for universal services and within five years, for enhanced universal service)? (New Sec. 6 (a))

Network infrastructure plans can ensure that all Kansans have available to them a full range of telecommunications services. However, prescribing by law the deployment of specific services and technologies by arbitrary dates may result in the deployment of technology when and where there is little or no demand. Kansas consumers could be required to fund technology deployment for which they would have little or no use. Network infrastructure plans -- specific services and technologies and deployment schedules -- should result from negotiations between each local exchange carrier and the Kansas Corporation Commission. The Commission is in the best position to balance the cost of network infrastructure deployment with public benefits.

8. From your perspective, what is the intent of and what are the implications of: defining the nature of price caps (type, treatment of price floor, establishment of initial prices for price cap for the residential and single-line business basket) in statute; and specifying a price cap adjustment formula in statute for individual services within the residential and single-line business basket and miscellaneous regulated services? (New Sec. 6)

The legislature is correct in defining the nature of price caps. By doing so, the legislature establishes the policy that existing prices may be increased only to a level that is less than the rate of inflation. The legislature is also correct in establishing that prices will not fall below a price floor in order to protect against predatory pricing. However, the cost standard of a price floor is a contentious issue among economists and should be determined by the Commission after it has conducted a thorough examination of the issue. Further, the price cap adjustment formula for individual services within the

miscellaneous basket of regulated services affords local exchange carriers inordinate pricing freedom before consumers have real choices for these miscellaneous services.

9. In your opinion, what is the intent of and what are the implications of authorizing downward adjustments in the price of services within the residential and single-line business service basket under the conditions set forth in the bill? (New Sec. 6)

New Section 6 (d) offers incumbent local exchange carriers inordinate pricing flexibility without a Commission finding that real competition exists.

The provision will allow local exchange carriers to unduly discriminate among customers. Only on the basis of "good faith" belief that a customer has a competitive alternative, the local exchange carrier can lower prices to a specific customer without offering the same prices, rates and terms to other similarly situated customers. Further, the Commission is not charged with finding that competition actually exists and such pricing flexibility is warranted. With this pricing freedom, a local exchange carrier can selectively price to its customers before competition emerges and, thus, prevent competition from ever developing.

10. In your opinion, what is the intent of and what are the implications of financing the KUSF and the Kansas Lifeline Service Fund from a surcharge on all intrastate toll services, including 800 service? (New Sec. 11 (a))

The Sub. for H.B. 2728 funding mechanism for universal support is wholly inconsistent with the Telecommunications Act of 1996. The federal act requires that universal service funds be contributed to by "all providers of telecommunications services" in an "equitable and nondiscriminatory"

manner. The state of Kansas will undoubtedly find itself defending this particular provision in the federal courts in preemption proceedings brought by intrastate toll providers

11. (Re: access to Internet) From your perspective, what is the intent of and what are the implications of placing rates and specific transmission capacities in statute? (New Sec. 13)

Prescribing rates and specific transmission capacities ensures that current state-of-the-art services are made available throughout Kansas. The danger in doing so is that future advances in technology are not captured.

However, New Section 13 requires the legislature to reconsider the prescribed rates and specific transmission capacities within a reasonable period of time. In this way, Sub. for H.B. 2728 requires the legislature to consider advances in technology and demand.



William E. Roche, Vice President
Governmental and Public Affairs

PROPOSED AMENDMENT TO
SUBSTITUTE FOR HOUSE BILL NO. 2728

Page 9, Replace Lines 12-30

Prices for individual services and for services to individual customers may be reduced within a basket, provided that such prices are above long run incremental costs and are generally available under the same terms and conditions for similarly situated customers. An entire basket, if desired by the local exchange carrier, may be priced below the cap. No service shall be priced below long-run incremental cost which shall serve as a price floor. Access charges equal to those paid by telecommunications carriers to local exchange carriers shall be imputed as part of the price floor for toll services offered by such local exchange carriers on a total toll service basis.

Any downward adjustment in the prices of services within a price cap not otherwise reflected in existing tariff rates or rate charges shall become effective upon 30 days' notice, or such shorter time as the commission shall approve, if the commission has determined that the price reduction is necessary to respond to an offering by an alternate provider to the customer, or in the area for which the new price applies and if the commission determines that the price is above long run incremental costs for the service. The commission shall issue a final order within the 30 day period. Any other downward adjustment in rates or rate ranges for an individual service or for service to individual customers, shall be effective upon 14 days' notice, or such shorter time as the commission shall approve, and shall not be suspended for more than 90 days pending any final order of the commission.

*Senate Commerce
March 28, 1996*

Attachment 3.thru 3-3



William E. Roche, Vice President
Governmental and Public Affairs

PROPOSED AMENDMENT TO
SUBSTITUTE FOR HOUSE BILL NO. 2728

Page 20, Add New Section 20

Sec. 20. The commission may not implement, by order or rule, any requirement that is contrary to any applicable federal rule or law. Any provisions of this Act determined by the attorney general to conflict with federal law are hereby declared null and void.



William E. Roche, Vice President
Governmental and Public Affairs

PROPOSED AMENDMENT TO
SUBSTITUTE FOR HOUSE BILL NO. 2728

Page 16, Replace Lines 7 - 40

The commission shall require every telecommunications company that provides intrastate telecommunications services to contribute to the KUSF and the KLSF on an equitable and nondiscriminatory basis, which shall be calculated as a percentage of each telecommunications company's intrastate revenues, minus payments to intermediaries.

HEIN, EBERT AND WEIR, CHTD.

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Ronald R. Hein

William F. Ebert

Stephen P. Weir

Melissa A. Wangemann

SENATE COMMERCE COMMITTEE

Re: House Substitute for HB 2728

Presented by Ronald R. Hein

on behalf of

CLASSIC COMMUNICATIONS

March 28, 1996

Madam Chairman and Members of the Committee:

My name is Ron Hein, and I am legislative counsel for Classic Communications which owns significant cable television franchises in Kansas and other states. Classic provides services to over 600,000 people living in 300 small towns in Texas, Oklahoma, Missouri, Arkansas, and Kansas. As part of its overall telecommunications strategy, Classic has also purchased four telephone franchises in Kansas. Classic's mission is to provide high quality telecommunications services at a competitive price in rural markets.

When Sub. HB 2728 was heard in the House, Classic expressed several concerns about the bill. Many of those issues still exist and could be placed under the general heading of conformity with the federal Telecommunications Act of 1996. The major concern expressed related to the distribution of Kansas Universal Service Fund monies.

In response to that concern, Rep. Doug Lawrence, Chairman of the House Select Committee on Telecommunications, drafted an amendment which was adopted on the floor of the House. The intent of that amendment was to provide distribution of Kansas Universal Service Funds in a manner which is more consistent with the Federal Act. Classic had indicated that it could support Sub. HB 2728 if the KUSF was restricted to be more consistent with the Federal Act.

After adoption of the House floor amendment, Classic believed that it could support Sub. HB 2728, at least based upon the intent of the House floor amendment. Classic was not able to see the amendment as finally drafted until after it had been adopted on the House floor, although we had a draft, which ultimately was changed, of the amendment available shortly before the vote.

Upon closer inspection of the action taken by the House, it is clear that the amendment did not accomplish its intent, and due to the detailed provisions of the act regarding how the KUSF is to be administered, and because of some of the definitions, the amendment still does not solve the KUSF problem.

Classic strongly believes in the need for universal service to insure that services are rendered to all customers, including high cost customers in rural areas or undesirable customers in urban areas. Under the Federal Telecommunications Act of 1996, and under

*Senate Commerce
March 28, 1996
Attachment 4 thru 4-10*

current federal law, there is a Universal Service Fund administered at the federal level for this purpose. Sub. HB 2728 sets up a Kansas Universal Service Fund as a mechanism to replace revenue that would be lost by virtue of reduction in access rates.

As originally introduced, only the incumbent companies would have been entitled to the Universal Service Funds, which would have put them at a competitive advantage over other competitors who would also desire to build infrastructure.

As amended by the House, the bill now recognizes that any entity that provides infrastructure in such high cost areas should be permitted to be reimbursed for universal service, which is provided on a per-line basis under federal law. Subsection (e) of Section 5 insures that telecommunications providers in rural areas will be encouraged to build their own infrastructure. This is consistent with the intent of the entire act.

Under both federal law and Sub. HB 2728, companies who desire to compete in rural areas must first meet eligibility requirements which include a requirement to provide service to the entire service area. In the rural area, the federal law prohibits the so-called "cherry picking" and requires competitors to service the entire area to be eligible to compete. The KCC must also make a determination that competition is in the public interest, and other requirements must be met.

If all of those eligibility requirements are met as provided in federal law and Sub. HB 2728, then KUSF funds should be available to all companies if the companies develop their own infrastructure. In this way, no matter who provides the infrastructure, the fund is utilized to support the high maintenance and infrastructure costs of those rural areas.

Classic does have some proposed amendments to solve the problem of KUSF funding, and to insure that it is available to all eligible carriers who provide infrastructure in high cost areas, and not just to the incumbent telephone companies. (See balloon attached.)

These changes will insure that all telecommunications services providers who utilize infrastructure to serve an exchange area as contemplated in subsection (e) of Section 5 will be entitled to participate in the KUSF. This will also permit the fund to be administered in the same manner as the federal Universal Service Fund.

If these amendments are adopted, Classic would support Sub. HB 2728. If these amendments are not adopted, Classic would oppose the bill.

I believe the situation that has occurred with this House floor amendment underscores some of the concern about Sub. HB 2728. When I first signed up to testify on this bill, I asked to be listed as a proponent. It wasn't until Monday night that I realized that the House floor amendment did not accomplish what Rep. Lawrence had explained to me would be accomplished by the amendment. My concern was solidified

Senate Commerce Committee Testimony
Sub. HB 2728
March 28, 1996
Page 3

on Tuesday, March 26, when Rep. Lawrence told me that he himself was aware that the amendment did not do what he had intended.

Classic believes that its proposed amendments will now make this bill satisfactory, on balance, although Classic still has concerns about other provisions in the bill.

For instance, Classic would support any amendments adopted by the Senate that will bring this legislation more into line with the Federal Telecommunications Act of 1996 in an effort to eliminate confusion in the marketplace.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.

4-4

1 local exchange carrier is able to provide telecommunications services in
2 such a manner that customers have the ability to route automatically
3 without the use of any access code, their telecommunications to the tele
4 communications carrier of the customer's designation from among two or
5 more telecommunications carriers, including such local exchange carrier

6 (e) "Federal act" means the federal telecommunications act of 1996
7 P.L. 104-104 (amending the communications act of 1934, 47 U.S.C. 151
8 et seq.

9 (f) "ISDN" means integrated services digital network which is a net-
10 work and associated technology that provides simultaneous voice and data
11 communications over a single communications channel.

12 (g) "LATA" has the meaning ascribed to it in the federal act.

13 (h) "Local exchange carrier" means any telecommunications public
14 utility or its successor providing switched telecommunications service
15 within any local exchange service area, as approved by the commission
16 on or before January 1, 1996. However, with respect to the Hill City
17 exchange area in which multiple carriers were certified by the commission
18 prior to January 1, 1996, the commission's determination, subject to any
19 court appeals, of which authorized carrier shall serve as the carrier of last
20 resort will determine which carrier shall be deemed the local exchange
21 carrier for that exchange.

22 (i) "Number portability" has the meaning ascribed to it in the federal
23 act.

24 (j) "I+ intraLATA dialing parity" means the ability of a local
25 exchange service customer to specify the telecommunications or local
26 exchange carrier that will carry the intraLATA long distance messages
27 when that customer dials either "1" or "0" plus a 10-digit number.

28 (k) "Operating area" means:

29 (1) In the case of a rural telephone company, operating area or service
30 area means such company's study area or areas as approved by the federal
31 communications commission;

32 (2) in the case of a local exchange carrier other than a rural telephone
33 company, operating area or service area means such carrier's local
34 exchange service area or areas as approved by the commission.

35 (l) "Rural telephone company" has the meaning ascribed to it in the
36 federal act; excluding any local exchange carrier which together with all
37 of its affiliates has 20,000 or more access lines in the state.

38 (m) "Telecommunications carrier" means a corporation, company, in-
39 dividual, association of persons, their trustees, lessees or receivers that
40 provides a telecommunications service, including, but not limited to, in-
41 terexchange carriers and competitive access providers, but not including
42 local exchange carriers certified before January 1, 1996.

43 (n) "Telecommunications public utility" means any public utility,

means a local exchange carrier (as defined in the Federal Act) operating entity to the extent that such entity--

(A) provides common carrier service to any local exchange carrier study area that does not include either--

(i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or

(ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

(B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(D) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996;

4-5

1 versal service issues, such as: continued existence of a carrier of last resort
2 able to serve every part of, and every customer in, the relevant service
3 area; access for all customers to universal service at reasonable and af-
4 fordable rates; the effect on the quality of telecommunications service
5 available to all customers in such service area; and the effect on access to
6 advanced telecommunications services for schools, health care providers
7 and public libraries.

8 (c) Using the findings of such investigation, the commission shall de-
9 velop guidelines to serve as a basis for granting certificates to telecom-
10 munications carriers in service areas of rural telephone companies, plac-
11 ing the highest priority on preservation and enhancement of universal
12 service. The commission shall provide preliminary findings no later than
13 October 31, 1996, and shall issue a final order no later than December
14 31, 1996.

15 (d) After adoption of the guidelines, the commission may consider an
16 application for a certificate to provide local exchange or exchange access
17 service in the service area of a rural telephone company. The commission
18 shall grant such application only upon finding that: (1) The application
19 complies with commission guidelines for multiple providers in rural tel-
20 ephone company service areas; (2) the applicant meets the requirements
21 in section 214(e)(1) of the federal act for designation as an eligible tele-
22 communications carrier for that area; (3) the applicant will provide service
23 throughout the service area of the existing rural telephone company; (4)
24 the applicant will meet and maintain quality of service standards estab-
25 lished by the commission pursuant to subsection (l) of section 3; and (5)
26 the approval of the application is consistent with the public interest, con-
27 venience and necessity.

28 [(e) In the event the commission grants certificates for one or
29 more telecommunications carriers and local exchange carriers to
30 provide service to a single local exchange, all such certificated tel-
31 ecommunications carriers and local exchange carriers shall be el-
32 igible to receive funds allocated from the KUSEF, however, the an-
33 nual total funds allocated to all such carriers serving a given
34 exchange shall be no greater than the annual amounts of funds
35 which were allocated, as of the date that other telecommunications
36 carriers or local exchange carriers actually began to offer service
37 to the exchange, to the local exchange carrier which initially pro-
38 vided that service. Annually, the commission shall allocate such
39 funds between all carriers offering such service to the exchange
40 based upon a determination of the extent to which such telecom-
41 munications carriers have made infrastructure investments in the
42 exchange and the extent to which the telecommunications carriers
43 or local exchange carriers serve high cost portions of the exchange.

service area
(delete brackets)
service area
service area
service area
service area
service area

4-6

1 In addition, when the commission issues an order designating how
2 such KUSF funds shall be allocated, the commission shall also issue
3 an order designating which telecommunications carrier or local
4 exchange carrier shall serve as the carrier of last resort.]

5 (e) [(f)] Any restrictions established by the commission in this inves-
6 tigation for rural entry of competitors or for resale and unbundling of
7 services shall not apply to any service area of a rural telephone company
8 if such company, or an entity in which such company directly or indirectly
9 owns an equity interest of 10% or more, provides local exchange or
10 exchange access service, as authorized under section 4 and this section in
11 any area of the state outside of its local exchange areas as approved by
12 the commission on or before January 1, 1996, and outside of any area in
13 which it is the successor to the local exchange carrier serving such area
14 on or before January 1, 1996.

15 New Sec. 6. (a) ~~Each local exchange carrier~~ shall file a network
16 infrastructure plan with the commission on or after January 1, 1997, and
17 prior to January 1, 1998. Each plan, as a part of universal service protec-
18 tion, shall include schedules, which shall be approved by the commission,
19 for deployment of universal service capabilities within two years of the
20 date of filing of such plan and the deployment of enhanced universal
21 service capabilities within five years of the filing of such plan as defined
22 pursuant to subsections (p) and (q) of section 2 repectively. Each plan
23 shall demonstrate the capability of the local exchange carrier to comply
24 on an ongoing basis with quality of service standards to be adopted by
25 the commission no later than January 1, 1997.

All certified telecommunications and local exchange carriers

26 (b) In order to protect universal service, facilitate the transition to
27 competitive markets and stimulate the construction of an advanced tel-
28 ecommunications infrastructure, each local exchange carrier shall file a
29 regulatory reform plan at the same time as it files the network infrastruc-
30 ture plan required in subsection (a). As part of its regulatory reform plan,
31 a local exchange carrier may elect traditional rate of return regulation or
32 price cap regulation. Regulatory reform plans shall also include:

certified telecommunications and

33 (1) A commitment to provide existing and newly ordered point-to-
34 point broadband services to any hospital as defined in K.S.A. 65-425, and
35 amendments thereto, school accredited pursuant to K.S.A. 72-1101 *et*
36 *seq.*, and amendments thereto, public library or other state and local gov-
37 ernment facilities at discounted prices close to, but not below, long-run
38 incremental cost; and

certified telecommunications and

39 (2) a commitment to provide basic rate ISDN service at prices which
40 are uniform throughout the carrier's service area and which are designed
41 to stimulate the development of an extensive residential market. ~~Local~~
42 exchange carriers shall not be required to allow customers purchasing the
43 foregoing services to resell those services to other categories of customers.

Telecommunications and local

4-7

The commission may reduce prices charged for services outlined in provisions (1) and (2) of this subsection, if the commitments of the local exchange carrier set forth in those provisions are not being kept.

(c) For regulatory reform plans in which price cap regulation has been elected, price cap plans shall have three baskets: Residential and single-line business, including touch-tone; switched access; and miscellaneous services.

(d) A price cap is a maximum price for all services taken as a whole in a given basket. After the initial three years of rate rebalancing, and except for any subsequent authorized rate rebalancing, no adjustment to an individual service price within the residential and single-line business service basket shall increase more than the consumer price index. Prices for individual services and for services to individual customers may be reduced within a basket. An entire basket, if desired by the local exchange carrier, may be priced below the cap. No service shall be priced below long-run incremental cost which shall serve as a price floor. Access charges equal to those paid by telecommunications carriers to local exchange carriers shall be imputed as part of the price floor for toll services offered by such local exchange carriers on a total toll service basis. Any downward adjustment in the price of services within a price cap not otherwise reflected in existing tariff rates or rate charges shall be presumed lawful and shall become effective upon seven days' notice, or such shorter time as the commission shall approve, if the tariff applicant has a good faith basis to believe the price reduction is necessary to meet the price offered by an alternate provider to the customer, or in the area for which the new price applies. Any other downward adjustment in rates or rate ranges for an individual service or for services to individual customers shall be effective upon 14 days' notice, or such shorter time as the commission shall approve, and shall not be suspended for more than 90 days pending any final order of the commission.

(e) The price cap for the residential and single-line business basket, including touch-tone, shall be established at the prices existing when the regulatory plan is filed. In the first three years of the plan, the price cap shall be adjusted annually by a rate rebalancing factor to offset the loss in revenues estimated for the following year due to reductions in both access charges and the imputed access portion of intraLATA toll charges provided by local exchange carriers; but shall not account for revenue reductions due to market share losses. The commission shall review and issue a final order within 60 days of any price cap adjustment filing and shall adjust prospectively the price cap to reflect any overestimate or underestimate of demand for the immediately preceding year. The rebalancing factor shall be applied to the basket as a whole and shall continue to be used as necessary for the commission to ensure that a revenue

For purposes of this section, "certified telecommunications and local exchange carrier" shall mean those local exchange carriers or telecommunications carriers certified pursuant to Section 5(e) of this act.

4-8

1 the commission shall initiate an investigation if more than 15% of the
 2 subscribers subject to the rate increase request such an investigation
 3 within 60 days of the date of distribution of the notice of the proposed
 4 change. Upon filing such an application for a rate increase, any rural
 5 telephone company seeking expedited approval of the proposed rate un-
 6 der this section shall send a notice to its subscribers by regular mail, which
 7 may be included with regular subscriber mailings. Such mailings shall
 8 include the name, mailing address and telephone number of the com-
 9 mission. The notice shall include a schedule of the proposed local
 10 exchange rates, the effective date of the rates and a description of the
 11 procedures by which the subscribers can petition the commission to de-
 12 termine the reasonableness of the proposed rates, including a provision
 13 specifically stating that protest by 15% or more of subscribers subject to
 14 the proposed rate increase would require the commission to initiate an
 15 investigation concerning the reasonableness of the proposed rate in-
 16 crease.

17 (d) The commission shall have the right to investigate and determine
 18 the reasonableness of an increase in local exchange rates and charges
 19 under subsection (c) by any rural telephone company within one year of
 20 the time local exchange rates or charges are increased. If the commission
 21 determines such rate or charge increases are unreasonable, the commis-
 22 sion shall have the authority to order a rate hearing and, after such hear-
 23 ing, shall have the authority to rescind all or any portion of the increases
 24 found to be unreasonable.

25 New Sec. 9. ~~On or before January 1, 1997, the commission shall es-~~
 26 ~~tablish the Kansas universal service fund, hereinafter referred to as the~~
 27 ~~KUSF:~~

28 (a) Rural telephone company revenues lost as a result of the provi-
 29 sions of subsection (a) of section 8 shall be recovered on a revenue neutral
 30 basis from a newly established KUSF. The revenue neutral calculation
 31 shall be based upon the revenues for the 12 months prior to September
 32 30, 1996, levelized for rate changes that are ordered by the commission
 33 prior to September 30, 1996.

34 (b) Any local exchange carrier that serves urban and high-cost rural
 35 areas shall receive support:

36 (1) For the difference between its interstate and intrastate access
 37 rates to the extent as determined by the commission that full-rate restruc-
 38 turing provided in subsection (e) of section 6 does not occur or if the
 39 commission determines that in the course of such rate restructuring the
 40 local exchange carrier experiences any revenue shortfall; and

41 (2) to serve the rural areas in its service territory if the commission,
 42 subject to all intervention capabilities of affected parties, as provided in
 43 the stipulation in Docket No. 127, 140-U (Phase IV) finds that the car-

The commission shall determine the eligibility of telecommunications companies other than telephone companies to receive KUSF and KLSF funding. A telecommunications company shall be eligible to receive KUSF and KLSF funding only if the company offers the services supported by the KUSF and KLSF (i) using its own facilities in whole or in part and (ii) advertises the availability of such services and the charges for such services. If a telecommunications company applies for KUSF and KLSF funding, in order to serve an area served by a rural telephone company, the commission shall first determine if grant of the application is in the public interest. A telecommunications company receiving KUSF and KLSF funding to serve an area served by a rural telephone company shall serve the entire study area of the rural telephone company.

1 tier's costs of providing local service in such areas, allocated in accordance
2 with the federal jurisdictional separations procedures, which on the ef-
3 fective date of this act were set forth in 47 C.F.R. Part 36, as in effect at
4 the time of the carrier's filing an application with the commission, and
5 including the intrastate portion of the cost of the local loop, are not cov-
6 ered by its local rates after the restructuring provided in any order by the
7 commission authorizing price cap regulation. Support provided under this
8 subsection shall not adversely affect receipt by a rural telephone company
9 of KUSF support.

10 (c) Effective June 1, 1997, any rural telephone company may request
11 supplemental KUSF support in accordance with the following pro-
12 cedures:

13 (1) A rural telephone company, whether or not eligible to initially
14 receive KUSF support, may receive supplemental KUSF funding based
15 upon the percentage increase in its access lines, as defined in the federal
16 jurisdictional separations procedures, which on the effective date of this
17 act were set forth in 47 C.F.R. Section 36.611(a)(8), as in effect at the
18 time of the company's filing an application with the commission, over the
19 12 months prior to its request. Such requests using simplified filing pro-
20 cedures shall be subject to an expedited review by the commission cor-
21 responding to the expedited review procedures, including all review, ver-
22 ification and intervention capabilities of affected parties, as provided in
23 the stipulation in Docket No. 127, 140-U (Phase IV). Requests shall be
24 deemed approved if a final order is not issued in 60 days.

25 (2) After March 1, 1997, upon filing intrastate access tariffs to main-
26 tain the parity of intrastate access rates with interstate rates, rural tele-
27 phone companies may file requests using simplified filing procedures with
28 the commission for increased support from the KUSF to be provided on
29 a revenue neutral basis. Such requests shall be subject to an expedited
30 review by the commission corresponding to the expedited review pro-
31 cedures, including all review, verification and intervention capabilities of
32 affected parties, as provided in the stipulation in Docket No. 127, 140-U
33 (Phase IV). Requests shall be deemed approved if a final order is not
34 issued in 60 days.

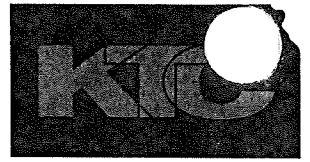
35 (3) A rural telephone company that has not elected price cap regula-
36 tion pursuant to any order of the commission authorizing price cap
37 regulation may file a request using simplified filing procedures with the
38 commission for supplemental funding necessary to recover: (A) Changes
39 to intrastate access revenue requirements caused by mandatory changes
40 in the jurisdictional separation procedures adopted by the federal com-
41 munications commission, as long as the request is filed within 12 months
42 after the effective date of the change; and (B) changes to intrastate access
43 revenue requirements that are calculated in accordance with jurisdic-

1 tional separations procedures adopted by the federal communications
2 commission and that arise from: (i) The provision of universal service
3 capabilities; (ii) other infrastructure expenditures in response to facility
4 or service requirements established by any legislative, regulatory or ju-
5 dicial authority; or (iii) natural disasters. In calculating such supplemental
6 funding, the commission shall utilize the rural telephone company's au-
7 thorized interstate rate of return, or its specific intrastate rate of return,
8 whichever is greater. Such supplemental funding shall be incurred for
9 purposes of providing service to and within the certificated territory as of
10 January 1, 1996, of the rural telephone company, or its successor, eligible
11 for such funding. Affected parties shall be allowed all review, verification
12 and intervention capabilities in proceedings involving any request under
13 this subsection. However, such requests shall be deemed approved if not
14 acted upon within 120 days or if a final order is not issued within 180
15 days of the request filing.

16 (4) Any additional KUSF funding other than as provided in para-
17 graphs (1), (2), and (3) of subsection (c) may be authorized in the discre-
18 tion of the commission but must be based upon a general rate case filing.

19 New Sec. 10. (a) Local exchange carriers that provided switched lo-
20 cal exchange services in the state prior to January 1, 1996, or their suc-
21 cessors, shall serve as the carrier of last resort in their exchanges and shall
22 be eligible to receive KUSF and KLSF funding. However, with respect
23 to the Hill City exchange area in which multiple carriers were certified
24 prior to January 1, 1996, the commission's determination, subject to court
25 appeals, of which authorized carrier shall serve as carrier of last resort
26 also shall govern which carrier is eligible for KUSF support. The local
27 exchange carrier serving as the carrier of last resort shall remain the car-
28 rier of last resort and shall be entitled to recover the costs of serving as
29 carrier of last resort until relieved of that obligation as set forth in sub-
30 section (b).

31 (b) **A [Except as provided in subsection (e) of section 5, a]** local
32 exchange carrier shall be relieved of its carrier of last resort obligations
33 for its operating area and no telecommunications or local exchange carrier
34 shall receive KUSF support for that operating area if the commission
35 determines that: (1) The revenue neutral rate restructuring that brings
36 intrastate access rates into parity with interstate access rates has occurred;
37 (2) one or more telecommunications carriers within that operating area
38 offer universal service to all inhabitants of that operating area at least
39 equal to and comparable to the service provided by the local exchange
40 carrier that has served as the carrier of last resort; and (3) all telecom-
41 munications providers, including all local exchange carriers, in that op-
42 erating area are subject to the same quality of service standards and have
43 the same flexibility to establish and change the price and other terms and



KANSAS TELECOMMUNICATIONS COALITION

- Blue Valley Telephone Company
Home
- Columbus Telephone Company
- Craw-Kan Telephone Coop., Inc.
Girard
- Cunningham Telephone Company, Inc.
Glen Elder
- Elkhart Telephone Company, Inc.
- Golden Belt Telephone Assn., Inc.
Rusb Center
- Gorham Telephone Company
- H&B Communications, Inc.
Holyrood
- Haviland Telephone Company, Inc.
- Home Telephone Company, Inc.
Galva
- JBN Telephone Company, Inc.
Wetmore
- KanOkla Telephone Assn., Inc.
Caldwell
- Lalharpe Telephone Company, Inc.
- Madison Telephone Company, Inc.
- MoKan Dial, Inc.
Louisburg
- Moundridge Telephone Company, Inc.
- Mutual Telephone Company
Little River
- Peoples Mutual Telephone Company
LaCygne
- Pioneer Telephone Assn., Inc.
Ulysses
- Rainbow Telephone Coop. Assn., Inc.
Everest
- Rural Telephone Service Company, Inc.
Lenora
- S & A Telephone Company, Inc.
Allen
- S & T Telephone Coop. Assn.
Breuster
- South Central Telephone Assn., Inc.
Medicine Lodge
- South Central Telecommunications
of Kiowa, Inc.
Medicine Lodge
- Southern Kansas Telephone Co., Inc.
Cleuroater
- Southwestern Bell Telephone Company
Topeka
- Sunflower Telephone Company, Inc.
Dodge City
- Totah Telephone Company, Inc.
Ochelata, OK
- Tri-County Telephone Assn., Inc.
Council Grove
- Twin Valley Telephone, Inc.
Miltonvale
- United Telephone Association, Inc.
Dodge City
- Wamego Telephone Company, Inc.
- The Wheat State Telephone Co., Inc.
Udall
- Wilson Telephone Company, Inc.
- Zendia Telephone Company, Inc.

To: **Members of the Kansas Senate Commerce Committee**

From: **Kansas Telecommunications Coalition**

Re: **Substitute for HB 2728**

Date: **March 28, 1996**

Attached are responses to specific questions which arose during the Commerce Committee's March 26 hearing on Sub. HB 2728. The following questions are addressed on the following pages:

- What is the Kansas Telecommunications Coalition's (KTC) position on the funding mechanism for universal service?
- Should individuals have an entitlement to universal service?
- By passing Sub. HB 2728, does the Kansas Legislature usurp the authority of the Kansas Corporation Commission (KCC)?
- How do amendments placed on the bill on the House floor impact the intent of the Telecommunications Strategic Planning Committee (TSCP)?
- Why is the Consumer Price Index (CPI) the proper index to use in relation to the price cap formula?

Senate Commerce
March 28, 1996
 P.O. Box 960
 Moundridge, Kansas 67107

Attachment 5 thru 5-9

WHO SHOULD PAY INTO A KANSAS UNIVERSAL SERVICE FUND?

New Section 11 of Substitute for House Bill 2728 (hereinafter referred to as HB 2728) beginning on page 16, line 7, establishes funding for a KUSF and KLSF. It provides that they be funded "through a per minute surcharge assessed to the provider on all intrastate retail billed toll minutes, including 800 service billed minutes of telecommunications carriers, local exchange carriers and wireless communications service providers". This is consistent with how access charges are recovered today and is consistent with the federal act in that all providers that offer toll services will, in a competitively neutral fashion, assess the surcharge.

This method of funding KUSF/KLSF is patterned on the method of funding the Federal Universal Service Fund. That Fund is based on a surcharge assessed to the providers of interstate toll service. Thus, the method of funding KUSF/KLSF is fully consistent with the way the FCC set up and operates the Federal Universal Service Fund.

The Federal Act is very explicit about requiring providers of interstate services to contribute to a universal service support mechanism and specifically provides that providers of intrastate services shall contribute to the preservation and advancement of universal service -- "*in a manner determined by the State*" -- (emphasis added) --thus, Substitute HB 2728 is fully consistent with the Federal Act. It is up to the State of Kansas to determine the manner in which different types of telecommunications service providers contribute to the preservation and advancement of universal service.

The States retain their authority over intrastate telecommunications matters, and the Kansas Legislature is the appropriate body to establish a KUSF/KLSF and set policies governing those funds. The Commission would than be the appropriate body to implement those policies.

The proposed mechanism to recover Kansas universal service funding (toll usage) is equitable and nondiscriminatory since all toll providers will incur exactly the same surcharge per minute. No toll provider will bear a disproportionate share of funding. In addition, the mechanism is consistent with how access charges -- which are the basis of the KUSF -- are recovered today.

Sprint/United has recommended that the funding mechanism for universal service should be intrastate revenues less payments to intermediaries. This approach is far from equitable and is not competitively neutral and would provide interexchange carriers with a significant and unfair advantage.

A shift from the traditional toll usage approach to the Sprint/United recommendation would decrease the IXC percent of support from approximately 45 percent down to 8 percent. SWBT and the ILECs, on the other hand, would have to bear 72 percent and 10 percent, respectively, of KUSF funding.

The proper and sensible contribution of carriers of last resort is to build, operate and maintain the facilities that make universal service a reality. The proper and sensible contribution of other telecommunications service providers (who, after all, also benefit from widespread access to those facilities) is to help pay to make universal service a reality. Each has its role, and the provisions of Substitute HB 2728 establish very practical roles that are essentially the same as the roles regarding the Federal Universal Service Fund.

WHO SHOULD RECEIVE KUSF SUPPORT?

New Section 10 of HB 2728, beginning on page 15, line 19, provides that recipients of the Kansas Universal Service Fund (KUSF) and Kansas Lifeline Service Fund (KLSF) would be telephone companies serving as the carrier of last resort (that is, the sole carrier with the obligation to provide service to anyone who requests it in their service area, no matter how uneconomical it may be to provide such service).

It is important to remember that the purpose of this fund is to support the preservation and advancement of UNIVERSAL SERVICE, not to support any telecommunications service provider that wants to enter a market. It is intended to ensure that a certain level of service is available to all Kansans, regardless of where they live and work.

Carriers of last resort are the true and only providers of universal service; they alone have the obligation to serve all customers.

With regard to recipients of KUSF support, the name of this fund says it all: It is a fund intended to support UNIVERSAL SERVICE. The only telecommunications service providers that provide universal service are those companies that serve as carriers of last resort. Only carriers of last resort should be eligible to receive universal service support.

IS UNIVERSAL SERVICE AN "ENTITLEMENT"?

We share a belief established in United States and Kansas public policy decades ago that the greatest good for the people of Kansas is served when the greatest number of Kansans is provided access to telecommunications services at reasonable and affordable rates. The Telecommunications Strategic Planning Committee and this bill, Substitute for HB 2728, call for the widest possible access to a state-of-the-art telecommunications network. We believe this is hardly a negative aspect of this bill, but rather one of its finest attributes.

As the Federal Act states, "Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas."

If access to modern telecommunications services for all Kansans is viewed as an "entitlement," then many other facilities and services that are also viewed as essential as a matter of public policy -- including highway construction, access to sources of power and heat, and public health programs -- would also fit that description.

Universal service not only includes the connection of individuals to the telecommunications network, but also access to advanced telecommunications services. As this committee has heard in testimony from several conferees, these services do not fall into the category of a "luxury," but rather are essential to education and economic development.

The Federal Act also calls for "...specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service." That is the purpose of the Kansas Universal Service Fund and the Kansas Lifeline Service Fund. Without universal service and lifeline support mechanisms, customers that become unattractive in an environment of competition - whether they live in a high-cost rural area or have low incomes and therefore generate little revenue - would likely be denied access to modern telecommunications services.

The provisions in this bill to preserve and advance universal service are among its greatest strengths, and one of the primary reasons why this bill is needed now.

DOES THIS LEGISLATION PUT THE LEGISLATURE IN WHAT SHOULD BE THE KCC'S ROLE? ARE WE ASKING THE LEGISLATURE TO PUT INTO LAW WHAT SHOULD BE DECIDED BY THE KCC?

Public Utility rate making and statewide utility regulation are exclusively legislative functions; it is not an executive or judicial function. The Legislature can choose or not choose to delegate all or some of the regulatory functions to an agency and can establish the parameters under which that agency shall regulate. Kansas Gas & Electric Co. v. Kansas Corporation Commission, 239 Kan. 483, 720 P.2d 1063 (1986). In 1911, the Kansas Legislature both created and delegated to the Commission (and its predecessor agencies) for the first time, authority to regulate public utilities. Laws 1911, Chpt. 238. Included in this initial delegation were specific parameters that the Commission was to follow in regulation, including accounting systems, valuation of property, time frames, entry and exit requirements, rate making guides and other specific requirements. Since 1911, the Legislature has altered, deleted from and added to the Commission's delegated powers. How much or how little is delegated is within the exclusive jurisdiction of the Legislature; the complete act of regulation is an exercise of the Legislature's power. The Commission, therefore, can only and does only implement those principles delegated by the Legislature and within the framework established by the Legislature.

COMPARISON OF TSPC PROPOSAL AND THE HOUSE FLOOR AMENDMENTS TO SUBSTITUTE FOR HB 2728

TSPC PROPOSAL

1. Required facilities-based competition until local exchange company allowed to enter interLATA market. Local exchange company could resell its services at any time.

HOUSE FLOOR AMENDMENTS

Any direct incentive to provide facility-based competition and investment in Kansas was amended out of HB 2728.

New Sec. 4 (c)

To encourage telecommunications carriers to build or install telecommunications facilities, including, but not limited to, local loop and switching facilities in the state, and except as otherwise negotiated by a local exchange carrier and a telecommunications carrier, the prices for such unbundled facilities shall ~~recover the actual costs, including an appropriate allocation of joint and common costs and a reasonable profit~~ **[be determined by the commission, on a nondiscriminatory basis, to permit the recovery of actual costs and a reasonable profit]**; the ~~discount for resale of any existing retail telecommunications services provided by local exchange carriers shall not exceed 10% unless the commission finds that there is clear and convincing evidence that the avoided costs are greater than 10%;~~ **[commission shall determine wholesale rates charged subscribers for the telecommunications service requested, excluding costs that will be avoided by the local exchange carrier]**

2. Telecommunications companies providing local exchange service shall provide telephone companies corresponding access to their facilities and services.

Cable television companies and other telecommunication carriers that use telephone companies facilities **do not** have to provide telephone companies access to their services on the same basis as incumbent providers.

*facilities
and*

New Sec. 4 (e)

~~Telecommunications carriers, including, but not limited to, cable television companies that directly or indirectly through affiliated enterprises provide local exchange or exchange access service, shall provide local exchange carriers corresponding interconnection, resale of their existing telecommunications services and unbundled access to their facilities on the same terms and conditions as required of the local exchange carriers.~~

TSPC PROPOSAL

3. Rate rebalancing (e.g. access, toll and local) to occur over a three year period with intrastate switched access prices to equal interstate switched access prices as long as corresponding changes to local service price caps are made. Total increase to local service prices limited to \$1.50 per month per year for three years.

4. All miscellaneous services are **immediately** price deregulated.

HOUSE FLOOR AMENDMENTS

The throttle on rate rebalancing left to the KCC. The House amendment deleted the \$1.50 per month increase as well as the framework for rebalancing generally.

New Sec. 6 (e)

The price cap for the residential and single-line business basket, including touch-tone, shall be established at the prices existing when the regulatory plan is filed. In the first three years of the plan, the price cap shall be adjusted annually by a rate rebalancing factor to offset the loss in revenues estimated for the following year due to reductions in both access charges and the imputed access portion of intraLATA toll charges provided by local exchange carriers, but shall not account for revenue reductions due to market share losses. The commission shall review and issue a final order within 60 days of any price cap adjustment filing and shall adjust prospectively the price cap to reflect any overestimate or underestimate of demand for the immediately preceding year. The rebalancing factor shall be applied to the basket as a whole and shall continue to be used as necessary for the commission to ensure that a revenue balance is reached for any access and local price rebalancing under this section. Total increases in the monthly residence and single-line business rate shall be limited to \$1.50 per line in each of the first three years of the price cap plan, unless the commission authorizes a greater amount. Rate rebalancing may occur after the initial three year rate rebalancing to correspond to any adjustments made to interstate access rates. Any increases in the price cap which is the residential and single-line business basket for rate rebalancing in subsequent years shall be subject to the approval of the commission in accordance with subsection(f). In addition to any authorized rate rebalancing after the first three years of the price cap plan, the price cap which is the residential and single-line business basket shall thereafter be adjusted annually based on the change in the consumer price index minus 1.5%. However, no increase shall be made to such price cap during the first three years of the price cap plan for any purpose other than for the purpose of rate rebalancing pursuant to this section. **[Any adjustment to the price cap shall be approved by the commission].**

All miscellaneous services are **not** immediately price deregulated. The amendment deleted the one year deadline and authorized price regulation by the KCC until LEC offers 1+ intraLATA dialing parity.

New Sec. 6 (g) line 31

~~or July 1, 1997, whichever occurs first~~

WHY IS THE CPI A PROPER INDEX FOR THE PRICE CAP FORMULA?

The intent of the price cap adjustment formula is to allow the price ceiling to rise - or fall - each year by a percentage equal to some widely-accepted index of inflation. The Consumer Price Index (CPI) is a widely-recognized and understood measure of inflation. It is used regularly in cost of living formulas by the government and private sector. Because it is so widespread, it is more likely to inspire public trust and confidence. Peter Temin, the MIT economist who served as the consultant to the Telecommunications Strategic Planning Committee, recommended its use as the best measure of inflation.